

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JEROME HOLLOWAY,

Petitioner,

v.

CASE NO. 92-72052
HONORABLE NANCY G. EDMUNDS

SHERRY BURT,

Respondent.

ORDER DENYING PETITIONER'S MOTION TO AMEND

Pending before the Court is petitioner Jerome Holloway's motion to amend his closed habeas corpus petition to include one or two new claims regarding his appellate attorney and the fact that the jury was never sworn during his state criminal trial. Petitioner seeks to have his claims relate back to the date of his habeas corpus petition, which was filed on April 14, 1992.

Leave to amend must be freely given "when justice so requires," Fed. R. Civ. P. 15(a)(2), but "the party requesting leave to amend must 'act with due diligence if it wants to take advantage of the Rule's liberality.'" *Parry v. Mohawk Motors of Mich., Inc.*, 236 F.3d 299, 306 (6th Cir. 2000) (quoting *United States v. Midwest Suspension & Brake*, 49 F.3d 1197, 1202 (6th Cir.1995)). Courts may deny leave to amend when an amendment would be futile. *See id.* at 307; *see also Coe v. Bell*, 161 F.3d 320, 341 (6th Cir. 1998).

The delay in this case has been uncommonly long, and an amendment would be futile because there is no pending habeas petition to which an amendment can relate back. This case has been closed for sixteen years, and the Court's judgment was affirmed on appeal in July of 1993.

Furthermore, the United States Court of Appeals has refused to permit Petitioner to file a second or successive habeas petition. The Court of Appeals determined last year that Petitioner's arguments – including the argument that the jury was “unsworn” – did not satisfy the requirements for obtaining permission to file a second or successive habeas petition. *See in re Jerome Holloway*, No. 07-1799 (6th Cir. Apr. 24, 2008) (unpublished). Accordingly, Petitioner's motion to amend his habeas petition [Dkt. #68, Feb. 17, 2009] is **DENIED**.

s/Nancy G. Edmunds
Nancy G. Edmunds
United States District Judge

Dated: May 11, 2009

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on May 11, 2009, by electronic and/or ordinary mail.

s/Carol A. Hemeyer
Case Manager